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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,201	02/17/2004	Christopher A. Weinberg	WEIN0301	1754

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EXAMINER	
SAYALA, CHHAYA D	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
03/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/781,201	WEINBERG, CHRISTOPHER A.	
	Examiner	Art Unit	
	C. SAYALA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/16/04,9/6/05,2/9/06, 4/28/06,5/9/06,5/24/06,6/29/06,7/11/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-4, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chong (US Pub 2002/0142079) in view of Hague et al. (US Patent 6827041), Perlberg et al. (US Patent 6223693) and Brown (US Patent 6886496).

Chong teaches the steps of depilating, defatting, splitting and rinsing and sun-drying the hide. See paragraph [0010] and reveals that hides for chews come from both cowhide and porkhide (see paragraph [0006]. The reference does not teach expanding the skin. However, Hague et al. teaches this aspect and discloses the preparation of such a product, see col. 3, line 12, col. 4, lines 54-65. The primary reference also does not teach softening the hide, but Perlberg et al teach adding a humectant to moisturize the hide and make it soft to avoid the undesirability of rigidity (col. 2, lines 1-3). The primary reference does not teach an inner filling to the rawhide, or extruding the filling, combining them, or shaping the product or coating the final product. Brown shows all these aspects. See col. 5 that teaches the inner filling as a meaty jerky product that is extruded and then encapsulating this with the outer chew shell, the pork skin, and then shaping the two and drying. See col. 6 which discloses coating such a product with a

cold dip, col. 6, lines 20-25. The coating can also be a "clear" coating or just "simple smoke" (lines 45-49). See Figs. 6 and 7 show the shapes that the product is twisted into. Figs 1, 5-6 exemplify pressing, twisting and knotting the hides. To combine such aspects, all directed to animal hides, all to chews would have been obvious to one or ordinary skill in the art. Applicant's steps of cleaning and preparation are so well know that these steps are established as a acronym: "clean, cut and dry" method steps for hides. To take such a prepared hide and soften it, roll it, extrude the inner filling and combine it with the prepared hide and coat it by dipping and drying the whole product are steps that re rendered obvious by the above applied references, combinable for the basic reason of enhancing the palatability and prolonging the chewing pleasure of the dog chew.

2. Claims 5-9, 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chong (US Pub 2002/0142079) in view of Hague et al. (US Patent 6827041), Perlberg et al. (US Patent 6223693) and Brown (US Patent 6886496) and further in view of Fischer (US Patent 6238726), Andersen et al. (US Patent 6277420) and Axelrod (US Patent 5827565) with Miller et al. (US Patent 3899607).

The primary references are as described above. Brown teaches ingredients for the inner filling that is a jerky type of product: beef hearts and beef tripe, that is about 41% combined, soy grits about 18%, dried brewer's yeast 5%, propylene glycol 2%, liquid smoke 0.6%, molasses 5%. See col. 5.

Fischer teaches a jerky type product that is a mixture of chicken or beef meats (col. 3, lines 35-40, binders such as potato starch, rice flour, wheat flour, wheat gluten and soy flour, liquid smoke (col. 5), dried molasses, potato flakes (col. 8) in addition to potato flour. Andersen et al. also teach an inner filling for a rawhide product, that includes (col. 8), soy flour, soy grits, glycerin, smoke flavor, beef liver as well as chicken meal (col. 7). The amounts are also given. What these references show is that not only was the concept of filling a rawhide product known, but the ingredients were well so commonly used to the extent that they overlapped, establishing their common usage. Therefore, to fathom amounts of such ingredients intended for the same purpose, would have been obvious to one of ordinary skill in the art at the time the invention was made and merely finding new amounts for the same old ingredients all used for the same purpose, cannot be said to render this product patentably distinguishable unless applicant can show unequivocally that, indeed such amounts render the invention patentably distinct. It is well settled that it is a matter of obviousness for one of ordinary skill in the art to combine conventional ingredients in a food product, and to determine their optimum amounts, in the absence of evidence that the ingredients coact or cooperate in a manner to produce an unexpected result. *In re Levin*, 178 F.2d 945, 948, 84 USPQ 232, 234 (CCPA 1949). In the present case, there is no evidence that the claimed ingredients combined to form a product having unexpected properties nor that the claimed ingredients in the recited amounts achieve an unexpected result with respect to the method of preparation. Since Fischer teaches that the use of starch, gluten, etc are useful as binders in the preparation of

these fillings, then to combine one or more of such binders used for the same purpose would have been prima facie obvious See *In re Kerkohoven*, 205 USPQ 1069 (CCPA 1980). The above references do not disclose the other vegetables and the marrow. Axelrod discloses potato starch and the addition of carrot and spinach to a dog chew product. See col. 2, lines 20-30. The incorporation of such vegetable additives would have been obvious based on such disclosure and the disclosure of starch in Fischer. Miller teaches the use of a simulated marrow in a simulated bone. To replace this with real marrow would have been an obvious expedient. Additionally, when tripe, liver and such animal by-products have been shown to be useful in such a product by the primary references, to incorporate marrow would have been obvious too, barring any evidence to the contrary.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/
Primary Examiner, Art Unit 1794